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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)**

RAMSELL CORPORATION,

Plaintiff and Appellant,

v.

STATE DEPARTMENT OF PUBLIC
HEALTH, OFFICE OF AIDS,

Defendant and Respondent;

A.J. BOGGS & COMPANY, INC.,

Real Party in Interest.

C085548

(Super. Ct. No.
34-2016-80002373-CU-WM-GDS)

This case involves a challenge to a public contract awarded by a state agency. California's Department of Public Health, Office of AIDS (CDPH-OA), is responsible for administering the AIDS Drug Assistance Program (ADAP), which is a state-based

program that helps ensure that people living with HIV and AIDS in California who are uninsured or underinsured have access to medication and care.¹ In 2016, CDPH-OA awarded a contract to real party in interest A.J. Boggs & Company (Boggs) to manage the enrollment benefits portion of the ADAP (the EBM contract). Thereafter, Boggs's competitor, Ramsell Corporation (Ramsell), filed this action against CDPH-OA, alleging, among other things, that CDPH-OA's award of the EBM contract to Boggs without competitive bidding violated the State Contracting Manual or the Budget Act of 2015 (2015 Budget Act). Alternatively, Ramsell alleged that CDPH-OA awarded the contract to Boggs pursuant to "secret underground regulations" in violation of the rulemaking requirements of California's Administrative Procedures Act (Gov. Code, § 11340 et seq.).² Ramsell sought an order rescinding the EBM contract, a declaration that the contract was void and unenforceable, and an injunction preventing CDPH-OA and Boggs from "taking any action to transition ADAP enrollment services to Boggs" pending a ruling on the merits of this case.

Following CDPH-OA's termination of the EBM contract due to material breaches by Boggs, the trial court granted CDPH-OA's motion for judgment on the pleadings without leave to amend, ruling that termination of the EBM contract rendered this case moot and no exception to the mootness doctrine applied. This timely appeal followed.

¹ Acquired immunodeficiency syndrome (AIDS) is a chronic, potentially life-threatening condition caused by the human immunodeficiency virus (HIV). There is currently no cure for HIV/AIDS, but there are medications that can dramatically slow the progression of the disease. (Health & Saf. Code, §§ 120950-120971; see *id.*, § 131019.)

² "Unless it is subject to one of the enumerated exceptions, every regulation must be adopted consistent with the procedural requirements of the [Administrative Procedures Act]. [Citation]. This requires, among other things, public notice and an opportunity for public comment before the regulation takes effect. [Citation.] A regulation that is adopted inconsistently with the [Administrative Procedures Act] is an 'underground regulation' [citation] and may be declared invalid by a court [citation]." (*Bollay v. Office of Administrative Law* (2011) 193 Cal.App.4th 103, 106-107.)

We affirm the judgment.

BACKGROUND

Violation of Rules of Court

We begin by addressing a significant flaw in Ramsell’s appellate briefing. The California Rules of Court require litigants to “[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.” (Cal. Rules of Court, rule 8.204(a)(1)(C).)³ Thus, stating facts—whether in the statement of facts, the procedural history, or the argument portion of the brief—without providing any record cite, or citing to only a document rather than to a page, violates this rule. (See, e.g., *Evans v. Centerstone Development Co.* (2005) 134 Cal.App.4th 151, 166; *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 990.)

Ramsell’s opening brief contains only three citations to the appellate record, none of which are to the operative pleading. Ramsell’s failure to provide proper record citations continued in its reply brief, even after this flaw was highlighted by CDPH-OA in the respondent’s brief. When, as here, a litigant repeatedly provides no page citations to the record, the rule violation is egregious, significantly burdening the opposing party and the court. (*Evans v. Centerstone Development Co.*, *supra*, 134 Cal.App.4th at pp. 166-167; see *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 31 [rule violations in the opening brief are considered compounded and unreasonable when appellant violates the same rules in the reply brief after the error is pointed out by the respondent].)

The consequences of violating the Rules of Court can be severe. “[I]t is counsel’s duty to point out portions of the record that support the position taken on appeal,” and “[t]he appellate court is not required to search the record on its own seeking error.” (*Del*

³ Further rule references are to the California Rules of Court.

Real v. City of Riverside (2002) 95 Cal.App.4th 761, 768.) Accordingly, “any point raised that lacks citation may, in this court’s discretion, be deemed waived” or disregarded. (*Ibid.*; see *Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1267 [“To further complicate review, plaintiffs make numerous factual assertions in their briefs without record citation” but “[w]e are entitled to disregard such unsupported factual assertions”]; *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 60 [rule applies in demurrer context]; *Hernandez v. Vitamin Shoppe Industries Inc.* (2009) 174 Cal.App.4th 1441, 1453 [appellate courts may disregard any factual contention not supported by a proper citation to the record]; *Niles Freeman Equipment v. Joseph* (2008) 161 Cal.App.4th 765, 788 [disregarding assertion not supported by record citation].)

When a party’s brief fails to comply with the requirements of rule 8.204, the appellate court may decline to file it, return it for corrections and refile, strike it with leave to file a new brief, or disregard the noncompliance. (Rule 8.204(e).) Although it is within our discretion to strike Ramsell’s briefing and order it to file amended briefs, we will not do so. Having reviewed the record, we are convinced that doing so would not change our conclusion about the merits of Ramsell’s appeal.

We will disregard all factual assertions in Ramsell’s briefing that are not supported in a manner that complies with the Rules of Court and base our decision on the portions of the appellate record correctly cited by CDPH-OA and our own independent review of the record.

Relevant Facts and Procedural History

CDPH-OA is a public agency of the State of California. It is responsible for administering the ADAP, which is a state-based program that helps ensure that people living with HIV and AIDS in California who are uninsured or underinsured have access to medication and care. (See Health & Saf. Code, §§ 120950-120971.)

Ramsell is a corporation in the business of providing managed, public health care solutions to government agencies. From 1997 to June 30, 2016, Ramsell managed enrollment activities for the ADAP under a series of contracts.

In July 2015, CDPH-OA decided to divide the ADAP contract into three separate contracts, including a contract for enrollment benefits management, i.e., the EBM contract. In October 2015, CDPH-OA issued a Request for Proposals (RFP) for the EBM contract.

During the procurement process for the EBM contract, the RFP was amended several times. According to Ramsell, many of the amendments appeared to have one purpose—to ensure that Boggs would receive the highest score on the contract rather than Ramsell. In late October 2015, Ramsell submitted its final bid proposal for the contract.

In March 2016, Ramsell learned that CDPH-OA had awarded the EBM contract to Boggs. Upon reviewing the score sheets and evaluations of the bid proposals prepared by CDPH-OA, Ramsell discovered intentional scoring and evaluation errors that were significant enough to cause it to lose the contract. Ramsell also learned that its bid proposal was \$9 million less than the bid proposal submitted by Boggs.

In April 2016, Ramsell filed a formal protest of CDPH-OA's decision to award the EBM contract to Boggs. One week later, CDPH-OA cancelled the contract and announced that the RFP should not have cited the Public Contract Code as governing the procurement of the EBM contract, which requires competitive bidding for public contracts. (See Pub. Contract Code, § 100, subds. (b)–(d) [Legislature's intent in enacting Public Contract Code includes “ensur[ing] full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds,” “provid[ing] all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices,” and “eliminat[ing] favoritism, fraud, and corruption in the awarding of public contracts”].)

Citing the 2015 Budget Act, CDPH-OA claimed that its contracting was exempt from the requirements of the Public Contract Code and Department of General Services' oversight.

In May 2016, Ramsell learned that CDPH-OA awarded the EBM contract to Boggs without issuing a new RFP and competitive bidding.

In mid-June 2016, Ramsell filed a verified petition for writ of mandate and complaint for declaratory and injunctive relief, seeking a peremptory writ of mandate ordering CDPH-OA to rescind the EBM contract. Ramsell also sought a declaration that the contract was void and unenforceable, and a preliminary injunction preventing CDPH-OA and Boggs from "taking any action to transition ADAP enrollment services to Boggs" until the trial court ruled on the merits of this case. In support of its requested relief, Ramsell asserted that CDPH-OA unlawfully awarded the EBM contract to Boggs based on "biased and erroneous scoring" of the bid proposals. Alternatively, Ramsell asserted that CDPH-OA awarded Boggs the EBM contract without competitive bidding in violation of the State Contracting Manual or the 2015 Budget Act, or pursuant to "secret underground regulations" in violation of the rulemaking requirements of the Administrative Procedures Act.

In late June 2016, the trial court denied Ramsell's ex parte application for a temporary restraining order, which sought to prevent CDPH-OA from "entering, executing and performing [under] the [EBM contract]."

Following the trial court's overruling of CDPH-OA's demurrer in January 2017, CDPH-OA terminated the EBM contract due to material breaches by Boggs. In March 2017, CDPH-OA began handling eligibility and enrollment services for the ADAP, and

started working with an independent consulting firm to create a new ADAP enrollment system.⁴

In April 2017, CDPH-OA filed a motion for judgment on the pleadings, arguing that CDPH-OA's termination of the EBM contract rendered this case moot. Ramsell filed a written opposition, arguing, among other things, that exceptions to the mootness doctrine applied because the issue of whether CDPH-OA unlawfully awarded the EBM contract to Boggs presented "questions of general public interest" that remained in dispute and CDPH-OA's "actions can be repeated." In making this argument, Ramsell noted that CDPH-OA had retained an independent consulting firm to create a new ADAP enrollment system. In its reply brief, CDPH-OA acknowledged that it was working with Deloitte Touche, and suggested that it had entered into a contract with Deloitte to assist it in developing an "in-house" enrollment benefits management system.

The trial court issued a tentative ruling granting CDPH-OA's motion without leave to amend, ruling that the case was moot based on CDPH-OA's termination of the EBM contract. In so ruling, the court rejected Ramsell's contention that exceptions to the mootness doctrine applied. The court reasoned, "Ramsell appears to believe that [CDPH-OA] has already contracted with another entity (presumably Deloitte) to handle the enrollment services that Boggs used to handle, or that it intends to do so in the future, even though the contract 'rightfully' belongs to Ramsell. Assuming it has a reasonable factual and legal basis for this belief, Ramsell is free to file a new action challenging any

⁴ In connection with its opposition to CDPH-OA's motion for judgment on the pleadings, Ramsell requested the trial court take judicial notice of various documents, including a document prepared by CDPH-OA stating that the EBM contract was terminated, effective March 31, 2017, due to material breaches by Boggs. The document also indicated that CDPH-OA began handling enrollment services for the ADAP on March 6, 2017, and that CDPH-OA was working with an independent consulting firm to create a new ADAP enrollment system. The trial court granted Ramsell's request.

such new contract. If it does so, the issue that Ramsell raises in this (now moot) action can be decided at that time. For this reason, the court also declines Ramsell's request for leave to amend in order to add allegations regarding this allegedly new contract."

At the hearing on CDPH-OA's motion, Ramsell conceded that its writ of mandate cause of action (which sought rescission of the EBM contract) was moot due to the termination of the contract. However, it disagreed that the entire case was moot. Ramsell argued that two exceptions to the mootness doctrine applied with regard to its declaratory relief cause of action. According to Ramsell, material questions remained regarding the lawfulness of CDPH-OA's actions in awarding the EBM contract to Boggs. Ramsell also claimed that the public interest exception applied because its pleading raised "issues evading review and likely to recur." After hearing argument, the trial court found that no exception to the mootness doctrine applied and adopted its tentative ruling as the final ruling of the court.

After judgment was entered, Ramsell filed a timely notice of appeal.

DISCUSSION

1.0 Standard of Review

" 'A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. [Citation.] A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review.' [Citation.] 'All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law' [Citation.] Courts may consider judicially noticeable matters in the motion as well." (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777.)

“Denial of leave to amend after granting a motion for judgment on the pleadings is reviewed for abuse of discretion.” (*Ott v. Alfa-Laval Agri, Inc.* (1995) 31 Cal.App.4th 1439, 1448.)

2.0 Judgment on the Pleadings

“A case is considered moot when ‘the question addressed was at one time a live issue in the case,’ but has been deprived of life ‘because of events occurring after the judicial process was initiated.’ [Citation.] Because ‘“the duty of . . . every . . . judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or . . . to declare principles or rules of law which cannot affect the matter in issue in the case before it[,] [i]t necessarily follows that when . . . an event occurs which renders it impossible for [the] court, if it should decide the case in favor of plaintiff, to grant him [or her] any effectual relief whatever, the court will not proceed to formal judgment” [Citations.]’ [Citation.] The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief. [Citations.] If events have made such relief impracticable, the controversy has become ‘overripe’ and is therefore moot.” (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574; see *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454 [“a case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief”].)

Ramsell does not dispute, and we agree with the trial court, that CDPH-OA’s termination of the EBM contract rendered this case moot. (See *Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557 [case moot where contract with county had expired and court could not award it to disappointed bidder]; *Giles v. Horn* (2002) 100 Cal.App.4th 206, 227-228 [challenges to county contracts moot where contracts had been fully performed and had expired].) Ramsell’s sole contention on

appeal is that the trial court erred in failing to exercise its discretionary authority to decide an otherwise moot case. According to Ramsell, reversal is required because the issues raised by its declaratory relief cause of action fall within recognized exceptions to the mootness doctrine. We find no basis for reversal.

“When events render a case moot, the court, whether trial or appellate, should generally dismiss it.” (*Wilson & Wilson v. City Council of Redwood City*, *supra*, 191 Cal.App.4th at p. 1574.) However, the general rule is tempered by the court’s discretionary authority to decide moot issues. A court has discretion to decide an otherwise moot case that raises an issue of “broad public interest that is likely to recur, and . . . may otherwise . . . evade review.” (*People v. Harrison* (2013) 57 Cal.4th 1211, 1218; see *California Correctional Peace Officers Assn. v. State of California* (2000) 82 Cal.App.4th 294, 303-304 [“There is ample precedent for resolving important issues of substantial and continuing public interest that may otherwise evade review.”].) “Another exception to the mootness doctrine is where there is a distinct possibility that the controversy between the parties may recur. [Citation.] A third exception exists ‘when a material question remains for the court’s determination [citation].’ ” (*Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 1022, 1034.)

Ramsell first claims that this case falls within the public interest exception to the mootness doctrine. Ramsell asserts that competitive bidding on public contracts and awarding public contracts pursuant to “underground regulations” are important issues of public policy that will continue to evade review if not addressed in this action. According to Ramsell, CDPH-OA’s actions in awarding public contracts without competitive bidding are capable of evading review because CDPH-OA could terminate any such contract (like it did here) after a lawsuit is filed.

We are unpersuaded that the trial court abused its discretion in declining to apply the public interest exception to the mootness doctrine. Even assuming for purposes of

argument that the issues raised by Ramsell's declaratory relief cause of action are matters of broad public interest, Ramsell has not demonstrated that the issues are likely to recur but evade review. As the trial court pointed out, following CDPH-OA's termination of the EBM contract, it is unclear whether CDPH-OA intends on handling enrollment benefits services itself for the foreseeable future or whether it only intends on handling such services until it awards a new EBM contract. The record before the trial court indicated that CDPH-OA was working with an independent consulting firm to assist it in creating a new "in-house" ADAP enrollment system. Thus, it is not clear whether CDPH-OA will ever award another EBM contract. But even if it does, Ramsell faces no impediment to filing a lawsuit challenging CDPH-OA's actions. Assuming that CDPH-OA engages in the same allegedly unlawful process in awarding that contract, Ramsell can allege the same claims it alleges in this action. Ramsell fails to discuss this issue in its opening brief, even though it was the basis for the trial court's decision not to exercise its discretionary authority to decide an otherwise moot case. In its reply brief, Ramsell acknowledges that it may file a lawsuit challenging the award of a new EBM contract but speculates that any such challenge could evade review because CDPH-OA could terminate the contract like it did in this case. Ramsell's showing is insufficient to demonstrate an abuse of discretion by the trial court.

Ramsell next claims that the trial court erred in dismissing the entire action as moot because material issues remain for the court's consideration. We disagree. This exception to the mootness doctrine only applies "when the judgment, if left unreversed, would preclude a party from litigating its liability on an issue still in controversy." (*Viejo Bancorp, Inc. v. Wood* (1989) 217 Cal.App.3d 200, 205.) That is not true here. The judgment entered in this action does not bar Ramsell from challenging CDPH-OA's actions in awarding a new EBM contract. (See *Epstein v. Superior Court* (2011) 193 Cal.App.4th 1405, 1410 [holding that case was moot where actions challenged by

plaintiffs had been “ ‘terminated’ ” and, if there were a threat that they would recur in the future, “there is no reason to doubt that [a] new lawsuit will present a forum at least equal to this one for a full airing of the questions raised”].)

Finally, we reject Ramsell’s contention that the trial court erred in dismissing the entire action as moot because there is a distinct possibility that the same controversy will recur between the parties. As an initial matter, we agree with the People that Ramsell did not make this specific argument in the trial court, either in its opposition to the motion for judgment on the pleadings or during oral argument. At the hearing on CDPH-OA’s motion, Ramsell invoked the two exceptions to the mootness doctrine discussed above. It argued that there were material issues remaining for the court to decide, and urged the court to “apply the public interest [exception] for issues evading review and likely to recur” Assuming for the sake of argument that this claim was not forfeited, we conclude it lacks merit. Ramsell has failed to show that the same controversy between the parties may recur. Ramsell does not know what contracts, if any, Ramsell will enter into in the future. The record indicates that CDPH-OA intends on creating a new “in-house” ADAP enrollment system.

Because Ramsell has failed to show that the trial court abused its discretion in determining that no exception to the mootness doctrine applies, the trial court did not err in granting CDPH-OA’s motion for judgment on the pleadings.

3.0 Denial of Leave to Amend

Having found no error in the trial court’s granting of CDPH-OA’s motion for judgment on the pleadings, we next consider whether the court properly exercised its discretion in denying leave to amend. Ramsell bears the burden of demonstrating an abuse of discretion. This means it must show a reasonable possibility that an amendment will cure the defects in the operative pleading. (*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 444; see *Gami v. Mullikin Medical Center* (1993) 18 Cal.App.4th

870, 876 [in the context of a motion for judgment on the pleadings, leave to amend should be granted if there is any reasonable possibility that the plaintiff can state a viable cause of action].)

In its opposition to CDPH-OA's motion for judgment on the pleadings, Ramsell asserted, without elaboration, that it could amend its pleading to include allegations "challenging the legality of CDPH-OA's award of a contract to an independent consulting firm." At oral argument, Ramsell did not argue that leave to amend should be granted to add such allegations. Instead, it argued that the court should exercise its discretion to decide an otherwise moot case based on two exceptions to the mootness doctrine. In making this argument, Ramsell conceded that it knew "nothing" about CDPH-OA's contract with Deloitte. On appeal, Ramsell contends that reversal is required because exceptions to the mootness doctrine apply with respect to its declaratory relief cause of action. In the alternative, Ramsell requests that "this Court remand the matter to the trial court with directions to grant leave to amend" the declaratory relief cause of action. Ramsell, however, failed to provide a proposed amended pleading that cures the flaws in the operative pleading or specifically discuss how the operative pleading could be amended to state a viable cause of action. In its reply brief, Ramsell argues that CDPH-OA's "late revelation about the Deloitte contract justified leave to amend," and asserts, without more, that CDPH-OA used "the same illegal procedure to contract with Deloitte."

Because Ramsell has failed to demonstrate a reasonable possibility that an amendment will cure the defects in the operative pleading, it has not carried its burden of showing the trial court abused its discretion in denying leave to amend.

DISPOSITION

The judgment is affirmed. CDPH-OA shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

BUTZ, J.

We concur:

HULL, Acting P. J.

RENNER, J.